

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1875.7300003

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on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Application Number

10/661,107

Filed

September 12, 2003

First Named Inventor

Harry BIMS

Art Unit

2617

Examiner

Ajayi, Joel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

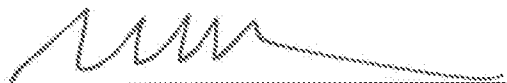
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

- ☐ attorney or agent of record.  
Registration number \_\_\_\_\_

- ☒ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 65,211

  
Signature

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09/28/10  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Harry BIMS

Appl. No.: 10/661,107

Filed: September 12, 2003

For: **Single Frequency Wireless  
Communication System**

Confirmation No.: 6489

Art Unit: 2617

Examiner: Ajayi, Joel

Atty. Docket: 1875.7300003

**Arguments to Accompany the Pre-Appeal Brief Request for Review**

*Mail Stop AF*

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby submits the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review (Form PTO/SB/33). A Notice of Appeal is concurrently filed.

***Arguments***

Applicant's arguments in the Amendment and Reply Under 37 C.F.R. § 1.116, filed on July 21, 2010, ("After Final Reply") and the Amendment and Reply Under 37 C.F.R. § 1.111, filed on March 10, 2010, ("Non-Final Reply") were not properly considered or responded to by the Examiner in the Office Action dated April 28, 2010 ("Final Office Action"), the Supplemental Office Action dated May 14, 2010 ("Supplemental Final Office Action"), and the Advisory Action dated August 12, 2010 ("Advisory Action"). The Examiner's response in these actions is legally and factually deficient because the Examiner failed to adequately demonstrate that United States Patent No. 5,864,579 to Briskman ("Briskman") teaches or suggests all of the elements recited by independent claims 1, 15, 20, 29, 33, 34 and 35.

For a rejection to be sufficient under 35 U.S.C. § 102, "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference." M.P.E.P. § 2131. The absence of any claimed element from the reference negates anticipation. Atlas Powder Co. v. E.I. du Pont de Nemours & Co., 750 F.2d 1569, 1574 (Fed. Cir. 1984). Briskman does not teach or suggest at least the feature of "*determining within the plurality of repeaters whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively will create interference between the first and second packets*" as recited by independent claim 1. Independent claims 15, 20, 29, 33, 34 and 35 each recite substantially a similar feature that is likewise not taught or suggested by Briskman. Consequently, Briskman cannot anticipate independent claims 1, 15, 20, 29, 33, 34 and 35.

Briskman does not teach or suggest each and every feature of independent claims 1, 15, 20, 29, 33, 34 and 35

The Examiner alleges column 2, lines 53-65, of Briskman teaches or suggests at least the feature of "*determining within the plurality of repeaters whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively will create interference between the first and second packets*" as recited by independent claim 1. (Final Office Action, p. 4; Supplemental Final Office Action, p. 4.) This passage of Briskman provides:

[t]here may be more than one terrestrial repeater, more than one geosynchronous satellites, or both, in a core urban area transmitting the same signal. Because these transmissions are at the same radio frequency, a user receiver preferably includes means for minimizing self-interference among a plurality of incoming transmissions. This is particularly difficult since the transmissions can arrive at the user receivers with random phase with respect to each other and with widely differing signal amplitudes.

(Briskman, 2:53-65.)

As previously stated in the Non-Final Reply and the After Final Reply, this passage of Briskman merely discloses the concept of self-interference, namely transmissions between two devices in a

wireless network resulting in unwanted signals being received by other user receivers. (Non-Final Reply, pp. 13-14; After Final Reply, p. 13.) In particular, this passage of Briskman discusses a user receiver that has a means for mitigation the self-interference. *Nowhere does Briskman disclose, nor has the Examiner alleged, that this means for mitigation the self-interference actually determines "whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively, will create interference between the first and second packets"* as recited by independent claim 1.

Applicant does not dispute the fact that transmissions between two devices in a wireless network may result in interference. (After Final Reply, p. 14.) However, independent claim 1 makes an explicit determination of whether interference will occur before packets are allowed to be transmitted over the wireless network. (After Final Reply, p. 14.) For example, in contrast to the Examiner's allegations in the Advisory Action, independent claim 1 clearly recites at least the features of *"determining within the plurality of repeaters whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively, will create interference between the first and second packets"* and *"wirelessly transmitting the first and second packets to the first and second mobile stations, respectively, at different times when it is determined that transmitting the first and second packets will create interference."* (See, Advisory Action, p. 2.) Consistent with the Specification, these features determine or detect that there "may be one or more transmissions performed by one or more repeaters that would cause interference that prevents the packets from being received by the intended mobile station." (Specification, ¶ [00196].)

Nowhere does Briskman teach or suggest making such a determination of whether an interference problem would be created before transmission of packets as recited by independent

claim 1. The Examiner is has yet to locate in the disclosure of Briskman where its user receiver, as described in column 2, lines 53-65, determines "*whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively will create interference between the first and second packets*" as recited by independent claim 1. Nor has the Examiner adequately responded to Applicant's arguments as presented in the After Final Reply and the Non-Final Reply other than with a conclusory and unsupported allegation that this aforementioned feature of independent claim 1 is well known. The Examiner has thus not established a *prima facie* case of anticipation.

Use of Official Notice in a rejection under 35 U.S.C. 102(b) is improper.

"A claim is anticipated only if each and every element as set forth in the claim is found, ***either expressly or inherently described***, in a single prior art reference." (M.P.E.P. ¶ 2131.) The Examiner, in the Final Office Action and the Supplemental Final Office Action, "asserts that it is well known in the art that transmitting two or more signals at the same time can cause interference." (Final Office Action, pp. 2-3; Supplemental Final Office Action pp. 2-3.) Notwithstanding the fact that this alleged Official Notice still does not describe the claimed feature, this use of Official Notice of an allegedly well known fact takes into account facts that not expressly or inherently described in Briskman. Therefore, the Official Notice of the allegedly well known fact taken by the Examiner is improper for an anticipatory rejection under 35 U.S.C. 102(b).

In summary, Briskman does not expressly or inherently teach or suggest at least the features of "*determining within the plurality of repeaters whether wirelessly transmitting first and second packets to the first and second mobile stations, respectively, will create interference*

*between the first and second packets"* as recited by independent claim 1. Additionally, the Official Notice taken by the Examiner that this feature is allegedly well known is improper for an anticipatory rejection under 35 U.S.C. 102(b). Independent claims 15, 20, 29, 33, 34 and 35 each recite substantially similar features that are likewise not taught or suggested by Briskman. Consequently, Briskman does not anticipate independent claims 1, 15, 20, 29, 33, 34 and 35.

Dependent claims 2, 4-8, 16, 17, 30, 31 are likewise not anticipated by Briskman for the same reasons as the independent claims from which they depend and further in view of their own respective features. Accordingly, Applicant respectfully requests that the rejection of claims 1, 2, 4-8, 15-17, 29-31, 33, and 34 under 35 U.S.C. § 102(b) be reconsidered and withdrawn.

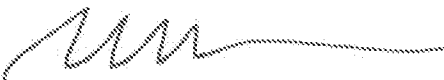
### ***Conclusion***

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b), and that all the pending claims be passed to allowance.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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